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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF MICHIGAN

10 AF, Inc., Michigan Corporation,  
11 HAROUTIOUN SAHAC  
12 BASTAJIAN, BASTAJIAN,  
13 CHRIS BASTAJIAN, ANGE  
14 BASTAJIAN, KARINA  
15 BASTAJIAN, MARIA  
16 BASTAJIAN, GIO  
17 BASTAJIAN and ALINA  
18 NOVIKOVA BASTAJIAN

Case No.: 2:23-cv-13009-JEL-CI

FIRST AMENDED COMPLAINT

19 Plaintiffs,  
20 against

21 UNITED STATES CITIZENSHIP  
22 AND IMMIGRATION SERVICES

23 Defendant

24 INTRODUCTION

- 25  
26 1. The plaintiffs have brought this action to hold unlawful and set  
27 aside the United States Citizenship and Immigration Services'

1 Decision of September 26, 2023, to deny Haroutioun  
2 Bastajian's Form I-140, Petition for Immigrant Worker, ECF  
3 No. 2 at 6, on the grounds that the Decision was arbitrary and  
4 capricious, inasmuch as it informally imposed requirements  
5 not previously made a part of its regulations, ran counter to  
6 the evidence before the agency, and/or failed to articulate a  
7 satisfactory explanation for its action, including a rational  
8 connection between the facts found and the choice made.  
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- 10  
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12  
13 2. Further, the plaintiffs have brought this action to hold  
14 unlawful and set aside the United States Citizenship and  
15 Immigration Services' Decisions of October 30, 2023, to deny  
16 Haroutioun Bastajian and his wife and children's applications  
17 for adjustment of status in the United States, ECF No. 3,  
18 (Form I-485) on the grounds that inasmuch as these denials  
19 were premised solely upon the denial of Haroutioun Bastajian's  
20 Form I-140, they were likewise arbitrary and capricious.  
21  
22  
23

#### 24 THE PARTIES

- 25  
26 3. AF, Inc. is a Michigan corporation which has been, and intends  
27 to be, when Haroutioun Bastajian becomes a permanent  
28

1 resident, his employer in the United States, and on that basis  
2 has entered into large scale agreements to provide Mr.  
3 Bastajian's services to at least two mosques, which it cannot  
4 complete if Mr. Bastajian is not granted U.S. permanent  
5 residency.  
6  
7

8 4. AF, Inc. resides in Dearborn Heights, Michigan.  
9

10 5. Haroutioun Bastajian , a citizen and national of Lebanon, is  
11 one of the leading decorators of mosques in Lebanon, ECF No.  
12 4 at 27, as well as one of the leading professionals of a field  
13 unique to the Islamic World - the use of Arabic calligraphy to  
14 decorate religious buildings. Id. at 28.  
15  
16

17 6. HAROUTIOUN SAHAC BASTAJIAN, and ALINA NOVIKOVA  
18 BASTAJIAN, CHRIS BASTAJIAN, ANGE BASTAJIAN, GIO  
19 BASTAJIAN, KARINA BASTAJIAN, MARIA BASTAJIAN,  
20 Mr. Bastajian's wife and children, respectively, are all citizens  
21 and nationals of Lebanon, except ALINA NOVIKOVA  
22 BASTAJIAN, who is a citizen and national of Russia.  
23  
24  
25

26 7. HAROUTIOUN SAHAC BASTAJIAN, CHRIS BASTAJIAN,  
27 ANGE BASTAJIAN, GIO BASTAJIAN, KARINA BASTAJIAN,  
28

MARIA BASTAJIAN and ALINA NOVIKOVA BASTAJIAN are the derivative beneficiaries of Mr. Bastajian's Form I-140.

8. The United States Citizenship and Immigration Services (USCIS) is an agency within the Department of Homeland Security to whom the Secretary of Homeland Security has delegated authority to adjudicate petitions for immigrant workers and applications for adjustment of status. It resides in the state of Maryland and the District of Columbia.

### JURISDICTION

9. This being an action arising under the Administrative Procedure Act, a law of the United States, original jurisdiction over this matter is conferred upon this Court by 28 U.S.C. § 1331.

### VENUE

10. Inasmuch as AF, Inc. is a resident of the Eastern District of Michigan, venue is proper in this district. 28 U.S.C. § 1391(e)(1)(C)<sup>1</sup>.

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<sup>1</sup> No real property is involved in this action.  
COMPLAINT - 4

STATEMENT OF RELEVANT FACTS

11. On April 18, 2022, Haroutioun Bastajian filed a Form I-140 with the USCIS to be classified as an employment-based immigrant in accordance with 8 U.S.C. § 1153(b)(1)(A) because he was an "alien with extraordinary ability". ECF No. 2 at 1.

12. 8 C.F.R. § 204.5(h)(2) defines "extraordinary ability" as: A level of expertise indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor.

13. Further, 8 C.F.R. § 204.5(h)(3) indicates that an individual can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award).

14. Barring the individual's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an individual to establish the sustained acclaim necessary to qualify as an individual of extraordinary ability. These criteria are:

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
- (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

1           15.   Additionally, 8 C.F.R. § 204.5(h)(4) provides that "[i]f the  
2           above standards do not readily apply to the beneficiary's<sup>2</sup>  
3           occupation, the petitioner may submit comparable evidence to  
4           establish the beneficiary's eligibility."  
5

6  
7           16.   If and only if the USCIS determines that the beneficiary has  
8           met three of these criteria, does it go on to determine whether  
9           he has been the beneficiary of sustained national or  
10          international acclaim, is among the small percentage who have  
11          risen to the very top of his field and whether he is coming to  
12          the United States to work in this field.  
13  
14

15  
16          17.   If the beneficiary meets 3 of the criteria set forth in §  
17          204.5(h)(3), plus all of the criteria set forth in the immediately  
18          preceding paragraph, then his petition shall be approved. 8  
19          U.S.C. § 1154(b).  
20  
21

22          18.   Mr. Bastajian submitted to the USCIS the following  
23          published material about himself in major media, relating to  
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27          <sup>2</sup> Mr. Bastajian, in addition to being the petitioner in his Form I-140, is  
28          also the beneficiary.

1 his work as a mosque decorator, as evidence that he met the  
2 criterion in § 204.5(h)(iii):  
3

4 a. Interview of Haroutioun Bastajian by Rania Barghout on  
5 October 18, 2015, in the MBC (Middle East Broadcasting  
6 Center) network, for the TV show “Talk of the Town”. Her  
7 written by-line appeared in the broadcast. ECF No. 4 at 2,  
8 16-19.  
9

10  
11 b. Evidence that MBC is the leading free-to-air, pan-Arab,  
12 news and entertainment channel. Satellite transmission first  
13 started from London in September 1991, making MBC the  
14 first-ever, independent Arabic satellite TV station and a  
15 market leader, delivering news and quality, family  
16 entertainment programming to more than 130 million  
17 Arabic speaking people around the world. ECF No. 4 at 20-  
18 21.  
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23 19. Mr. Bastajian submitted to the USCIS the following  
24 evidence of the display of his work in the field at artistic  
25 exhibitions to show that he met the criterion in § 204.5(h)(vii):  
26  
27  
28



1 a. A letter from the Arab American National Museum  
2  
3 confirming that "AANM currently displays a piece of  
4 artwork created and donated by Mr. Bastajian in the main  
5 courtyard of our museum." ECF No. 4 at 22.<sup>3</sup>  
6

7 20. Mr. Bastajian submitted to the USCIS the following  
8  
9 evidence that he has performed in a leading or critical role for  
10 organizations or establishments that have a distinguished  
11 reputation to show that he met the criterion in § 204.5(h)(viii):  
12

13 a. A letter from the Islamic Center of America (ICofA)  
14  
15 showing that it is a distinguished organization for which  
16 Mr. Bastajian has played a critical role. ECF No. 4 at 23-  
17 25.  
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22 <sup>3</sup> The Arab American National Museum is the first museum in  
23 the world devoted to Arab American history and culture. The  
24 Museum brings to light the shared experiences of immigrants and  
25 ethnic groups, paying tribute to the diversity of our nation."  
26 "Smithsonian Affiliations"  
27 [https://web.archive.org/web/20110929003611/http://affiliations.  
28 si.edu/AffiliateDetail.Asp?AffiliateID=197](https://web.archive.org/web/20110929003611/http://affiliations.si.edu/AffiliateDetail.Asp?AffiliateID=197). Quoted in ECF No. 4  
at 3.

- 1           b. A newspaper article showing that ICofA is the largest  
2           mosque in America.<sup>4</sup> ECF No. 4 at 26.  
3
- 4           c. The letter from the ICofA explained how Mr. Bastajian had  
5           played a critical role for the organization as follows:  
6

7           The Islamic Center of America is one of North America's  
8           oldest institutions. It has been serving the needs of Muslims  
9           in the greater Detroit area and throughout the United  
10          States. The Islamic Center of America has a long and rich  
11          history that embodies the Muslim American Community's  
12          search, struggle and triumph to find a place to belong. The  
13          story began in 1949, when Imam Mohammad .Jawad Chirri,  
14          a religious scholar who could not speak or understand  
15          English came to America at the request of a small group of  
16          people who were yearning for Islamic guidance. That humble  
17          beginning culminated into a Center that has become more  
18          than a place of worship but an Institution and a beacon for  
19          Islam in North America.

20          The Islamic Center of America traces its rich history back to  
21          the 1950s. The Muslim community in the Dearborn- Detroit  
22          area was growing like other small communities that came to  
23          the United States in search of a better life.

24          It was then that a committed group of young Lebanese-  
25          Americans worked to establish Michigan's first Shia mosque.  
26          Imam Chirri was invited to lead the newly-formed Islamic  
27          Center Foundation Society which evolved into the Islamic  
28          Center of Detroit (ICD) in 1963. The Detroit mosque was

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<sup>4</sup> Greg Kruppa, "Archbishop Meets With Muslim Leaders At  
Dearborn Mosque", Detroit News, March 20, 2009  
[https://pluralism.org/news/archbishop-meets-muslim-leaders-  
dearborn-mosque](https://pluralism.org/news/archbishop-meets-muslim-leaders-dearborn-mosque) (last accessed 04/03/2022).

1 largely financed by devoted Shia Muslims, some of whom  
2 pledged their homes and businesses as collateral, to support  
3 the building of the mosque. The ICD broke ground in  
4 November 1962. A year later, the mosque, which only had a  
5 prayer room, lecture hall, kitchen, and an open office space.  
6 Over the years, it soon became evident that the ICofA  
7 building located on Joy Road and Greenfield in Detroit did  
8 not meet the needs of the burgeoning Muslim community.  
9 In 2005, the current Center was inaugurated and became  
10 known as Islamic Center of America. The ICofA's 120, 000  
11 sq. ft. facility is the largest mosque in North America and  
12 the oldest Shia mosque in the United States.

13 The ICofA accommodates a large and magnificent meeting  
14 hall, industrial kitchen, a spacious prayer room, meeting  
15 rooms, and a library. Glazed bricks were used to veneer two  
16 decorative domes at the main entrance and the round  
17 mosque at the center of the building. Additionally, two 110-  
18 foot towers (minarets) were erected to add to the  
19 architectural layout.

20 The ICofA is renowned for its wide range of religious,  
21 educational, and public programs. It has long been  
22 recognized as one of Dearborn's most vibrant and influential  
23 Muslim entities. The CofA continues to be a  
24 pillar of cultural understanding of the pious religion of  
25 Islam.

26 Because of its long history, large size and location in  
27 Dearborn Michigan, the very heart of the American Shia  
28 community, there is no doubt that the ICofA is the most  
distinguished Shia mosque in America, to which all other  
Shia mosques and religious centers in the United States  
automatically look for guidance and leadership.

Unfortunately, after its initial completion, the mosque,  
particularly its dome, was largely bare. Inscriptions from the

1 Qur'an usually adorn the interiors and exteriors of  
2 mosques, establishing a strong link between scripture and  
3 the place of prayer. Although mosque decoration almost  
4 never includes human or animal forms, which are seen as  
5 potentially idolatrous, geometric, floral, vegetal, and  
6 calligraphic designs normally adorn mosques, symbolically  
7 recalling the promise of Paradise. However, given the large  
8 expense of the building of the mosque, it seemed like the  
heavy (and often quite expensive) task of decoration would  
have to be delayed indefinitely.

9 This is why the ICofA leadership was (pleasantly) surprised  
10 and amazed when Harout Bastajian, already widely  
11 recognized as one of the leading practitioners of religious  
12 decorative art in the Islamic World, volunteered to  
13 decorate the ICofA's mosque without compensation. This  
14 great undertaking, spanning several months, turned our  
15 new Mosque from a mere piece of architecture into a living  
16 breathing monument to God. Religious worshipers and  
17 visitors from all over the world, when they come to the  
Islamic Center, are able to gain inspiration from the verses  
of the Qu 'ran and elaborate religious decoration which  
burst upon them from all directions.

18  
19 Harout Bastajian certainly has played a critical role for the  
20 ICofA because without him it might have taken years to  
21 raise the funds to decorate the mosque, and even had the  
22 funds been raised, there were few in the world - and none  
23 in North America - who could have done at any price the  
amazing job which he did out of the goodness of his heart.

24 ECF No. 4 at 23-25

25 21. On January 13, 2023, USCIS sent Mr. Bastajian a request  
26  
27 for additional evidence. ECF No. 5 at 8-12.

1           22. Mr. Bastajian responded to this request with a letter dated  
2  
3           June 2, 2023, together with supporting evidence. ECF No. 5 at  
4           1-7, 13-50.

5           23. This evidence included:

6  
7           a) The following published material about Mr. Bastajian in  
8           major media, relating to his work as a mosque decorator, as  
9           evidence that he met the criterion in § 204.5(h)(3)(iii):

10  
11           i) An Arabic language transcript and certified English  
12           language translation of an interview of Haroutioun  
13           Bastajian by Rania Barghout on October 18, 2015, in  
14           the Middle East Broadcasting Center, for the TV  
15           show "Talk of the Town". ECF No. 5 at 22-27.

16  
17  
18           b) The following evidence of the display of Mr. Bastajian's  
19           work in the field at artistic exhibitions or showcases:

20  
21           i) A second, letter from Dr. Abouali, the Director of  
22           AANM, this one affirming "that Mr. Bastajian's art is  
23           displayed in a manner consistent with, and for the  
24           purpose of, artistic exhibitions", ECF No. 5 at 30,  
25  
26  
27  
28

1 together with photographs of his work as displayed.

2 ECF No. 5 at 344.

3  
4 c) The following evidence that Mr. Bastajian has performed in  
5 a leading or critical role for organizations or establishments  
6 that have a distinguished reputation.

7  
8 i) A letter from the Former Chairman of the Executive  
9 Board of the Islamic Center of America, stating that  
10 "Haroutioun Bastajian played an unequivocally  
11 critical role in the design, execution and opening of the  
12 Islamic Center of America in Dearborn, MI" Further,  
13 he states that:  
14  
15  
16

17 Haroutioun's responsibilities were abundant, yet specific.  
18 He led the execution of all artwork, calligraphy and patina  
19 in the hallways, prayer rooms, banquet halls, interior  
20 33doors, walls, soffits, domes, mezzanine, etc., His  
21 leadership included teams of skilled artists, painters,  
22 calligraphers and volunteers. Upon completion of this  
23 work, we, the Board of Directors at the Islamic Center of  
24 America, presented to Haroutioun a distinguished honor  
25 for which he shared with only the 4 or 5 leading individuals  
26 who were responsible with the completion of our historic  
27 mosque. His plaque hangs in our hall of honor.

28 ECF No. 5 at 35.

1           ii)     A letter from Farid Nasser, MD, Chairman, Board of  
 2  
 3                 Trustees, The Islamic Center of America explaining  
 4                 that:

5                 Over the years, Washington has recognized the Islamic  
 6                 Center of America for its religious, educational and public  
 7                 programs and as a place of moderate patriotic views and  
 8                 positive influence on our society here and abroad.  
 9                 Communications and relationship with the ICofA began  
 10                with President Jimmy Carter's Administration during the  
 11                hostage crisis and continued with most White House  
 12                Administrations thereafter every time issues and crises  
 13                erupt in the Middle East. The ICofA hosted US Senators,  
 14                US Presidents' advisors and envoys as well as delegations  
 15                from the German Federal Parliament.

16               In the past and for a decade, the US State Department and  
 17               National Defense University brought yearly over 70  
 18               officers delegates from all over the world to the Islamic  
 19               Center of America to marvel at the unique architecture  
 20               and calligraphy and to learn, dialogue and get their  
 21               questions answered. In addition, The ICofA hosts weekly  
 22               delegates from schools, universities, and interfaith from  
 23               within and outside the State of Michigan, Canada and  
 24               the United Kingdom.

25           ECF No. 5 at 50

26           24. On September 26, 2023, the USCIS issued a Decision

27               denying Mr. Bastajian's Form I-140. ECF No. 6.

28           25. The basis for that decision was that "USCIS finds that you  
 did not receive a one-time achievement (a major,

1 internationally recognized award) or meet at least three of the  
2  
3 10 criteria.” ECF No. 6 at 4.

4 26. In fact, USCIS found that Mr. Bastajian did not meet any of  
5  
6 the criteria. ECF No. 6 at 4-5.

7 27. In particular, USCIS found that Mr. Bastajian did not meet  
8  
9 the criterion at 8 C.F.R. § 204.5(h)(3)(iii) because although he  
10  
11 “provided a transcript of a brief television interview at MBC  
12  
13 Studios for the show Talk of the Town, (and) evidence about  
14  
15 the network, you did not provide evidence about the program  
16  
17 regarding viewership and if the show was broadcast locally,  
18  
19 regionally, nationally, or internationally.” ECF No. 6 at 3.

20 28. Further, USCIS found that Mr. Bastajian did not meet the  
21  
22 criterion at 8 C.F.R. § 204.5(h)(3)(vii), because although he  
23  
24 “submitted letters of support and pictures claiming that your  
25  
26 work is on display at the AANM. After a review of the  
27  
28 evidence, we conclude that your work (though technical and  
intricate) serves as decoration for the museum and not as a  
displayed work of art. As such, we find that your work is not



1 displayed in a manner consistent with, and for the purpose  
2 of, "artistic exhibitions or showcases."  
3

4 ECF No. 6 at 3.

5 29. Finally, USCIS found that Mr. Bastajian's did not meet the  
6 criterion at 8 C.F.R. § 204.5(h)(3)(viii) because although he  
7 submitted certificates, contract information, etc. (and) letters  
8 of reference/experience from Dr. Nassib Fawaz (president of  
9 the Lebanese International Business Council), Ron Amen  
10 (former chairman at Islamic Center of America), Dr. Ghaus M.  
11 Malik (co-founder at Islamic Association of Greater Detroit),  
12 Dr. Walid Harb (Chairman at The Islamic Center of America),  
13 Dr. Hashim Al-Tawil (Professor at Henry Ford College), et al.  
14 who primarily describe your past works and accomplishments  
15 in the field of mosque decoration and your work with  
16 calligraphy, etc., but do not provide detailed and probative  
17 information that specifically addresses how your role was  
18 leading or critical for their organization.  
19  
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26 ECF No. 6 at 4.  
27  
28

1           30. The USCIS further “noted” that:

2                   none of the letters are from previous employers and  
3                   therefore have no probative value for these proceedings as  
4                   all the claimed work appears to be contracted work.

5                   Contracted work is not evidence of a leading or critical role  
6                   for an organization or establishment. You were never an  
7                   employee of the claimed organizations or establishments,  
8                   you played no role in their business decisions, and you are  
                    not a part of any distinguished reputation that they may  
                    have.

9           *Id.*

10  
11           31. On July 11, 2022, Mr. HAROUTIOUN SAHAC BASTAJIAN,  
12                   CHRIS BASTAJIAN, ANGE BASTAJIAN, KARINA  
13                   BASTAJIAN, MARIA BASTAJIAN, ALINA NOVIKOVA  
14                   BASTAJIAN and GIO BASTAJIAN each filed a Form I-485,  
15                   Application to Register Permanent Residence or Adjust Status,  
16                   with USCIS. ECF No. 3 at 1.  
17  
18

19  
20           32. On October 30, 2023, USCIS denied all of these applications  
21                   on the grounds that Mr. Bastajian’s Form I-140, upon which  
22                   they relied, had been denied. ECF No. 3.  
23

24                   **STATEMENT OF RELEVANT LAW**  
25

26           33. 5 U.S.C. § 706 provides in relevant part that:

27                   To the extent necessary to decision and when presented, the  
28                   reviewing court shall decide all relevant questions of law,

interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1)compel agency action unlawfully withheld or unreasonably delayed; and

(2)hold unlawful and set aside agency action, findings, and conclusions found to be—

(A)arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

34. Agency action is arbitrary and capricious if it informally imposes a requirement not previously made a part of its regulations, *Maximum Home Health Care, Inc. v. Shalala*, 272 F.3d 318, 319 (6th Cir. 2001); runs counter to the evidence before the agency, or fails to articulate a satisfactory explanation for its action, including a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43, (1983), quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

## CAUSE OF ACTION

### I. TO HOLD UNLAWFUL AND SET ASIDE THE DECISION DENYING MR. BASTAJIAN'S I-140

1  
2 35. Inasmuch as the USCIS's decision denying Mr. Bastajian's  
3  
4 Form I-140, and, in particular, its finding that he did not meet  
5  
6 three (3) of the criteria of 8 C.F.R. § 204.5(h)(3), ran directly  
7  
8 contrary to all relevant evidence in the record, informally  
9  
10 imposed a requirement not previously made a part of its  
11  
12 regulations, and/or failed to articulate a satisfactory  
13  
14 explanation for its action, including a rational connection  
15  
16 between the facts found and the choice made, it is arbitrary  
17  
18 and capricious, and should be held unlawful and set aside.

19 36. Further, inasmuch as it was contrary to published agency  
20  
21 precedent, it was also not in accordance with law and so,  
22  
23 likewise, should be held unlawful and set aside.

24 37. The USCIS's conclusion that Mr. Bastajian failed to meet  
25  
26 the criterion at 8 C.F.R. § 204.5(h)(3)(iii) was arbitrary and  
27  
28 capricious, inasmuch as although the Decision did not dispute  
that the broadcast of his interview constituted published  
material about Mr. Bastajian, nor that it appeared in the MBC  
network, nor that the MBC network, with more than 130

1 million viewers, constituted major media, nor that the  
2 broadcast related to Mr. Bastajian's work as a mosque  
3 decorator, nor that his evidence included the title, date and  
4 author of the material and any necessary translation,  
5 nevertheless, it held that Mr. Bastajian had not met this  
6 criterion because "you did not provide evidence about the  
7 program regarding viewership and if the show was broadcast  
8 locally, regionally, nationally, or internationally." ECF No. 6  
9 at 3.

14 38. 8 C.F.R. § 204.5(h)(3)(iii) does not require that a petitioner  
15 provide any evidence regarding the material published about  
16 the him other than (among other things), that it was in major  
17 media, it was relating to the petitioner's work in the field for  
18 which classification is sought, and the title, date, and author of  
19 the material, and any necessary translation.  
20  
21  
22

23 39. Accordingly, the USCIS informally imposed requirements  
24 not previously made a part of its regulations when it refused to  
25 find a the criterion at § 204.5(h)(3)(iii) satisfied, even though  
26 Mr. Bastajian provided all of the evidence required by the  
27  
28

1 regulation, merely because he did not provide additional  
2 evidence not so required.  
3

4 40. Therefore, the USCIS's holding that Mr. Bastajian did not  
5 satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii), merely  
6 because he did not provide evidence not previously made a part  
7 of its regulations, was arbitrary and capricious.  
8

9  
10 41. Further, the mere fact that Mr. Bastajian might have  
11 submitted additional probative evidence in support of his  
12 petition is not a basis for denial when the evidence submitted  
13 satisfies the pertinent regulatory requirement. *See Matter of*  
14 *Chawathe* , 25 I. & N. Dec. 369, 375 (B.I.A. October 20, 2010) (  
15 “Although the applicant could have submitted more probative  
16 evidence to establish that SAT is a subsidiary of  
17 ChevronTexaco, such as direct evidence of the ownership of  
18 SAT stock, the AAO finds that the SEC Form 10-K and the  
19 letter written by his employer are sufficient to establish by a  
20 preponderance of evidence that SAT is a wholly owned  
21 subsidiary of ChevronTexaco.”).  
22  
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1           42. Therefore, the USCIS's holding that Mr. Bastajian did not  
2           satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii), merely  
3           because he did not provide evidence not previously made a part  
4           of its regulations, was contrary to a published agency decision  
5           and so, not in accordance with law.  
6

7           43. The USCIS's conclusion that Mr. Bastajian failed to meet  
8           the criterion at 8 C.F.R. § 204.5(h)(3)(vii), was also arbitrary  
9           and capricious inasmuch as although the Decision did not  
10          dispute that Mr. Bastajian's work was displayed at the AANM,  
11          nor that this museum was in fact an artistic exhibition or  
12          showcase, it nevertheless held that his "work (though  
13          technical and intricate) serves as decoration for the museum  
14          and not as a displayed work of art." ECF No. 6 at 3.  
15

16          44. The record, however, contains a letter from Dr. Abouali, the  
17          Director of the AANM, affirming "that Mr. Bastajian's art is  
18          displayed in a manner consistent with, and for the purpose of,  
19          artistic exhibitions", ECF No. 5 at 30.  
20

1           45. The record contains no evidence that Mr. Bastajian’s work  
2           serves as decoration for the museum and not as a displayed  
3           work of art.

4  
5           46. Accordingly, the USCIS’s decision was, to the extent that it  
6           held that Mr. Bastajian did not satisfy the criterion at 8 C.F.R.  
7           § 204.5(h)(3)(vii) because his work was supposedly not  
8           displayed in a manner consistent with, and for the purpose  
9           of artistic exhibitions or showcases, runs counter to the  
10          evidence in the record, as well as fails to articulate a rational  
11          connection between the facts found and the choice made, and so  
12          is arbitrary and capricious.

13  
14          47. The USCIS concluded that Mr. Bastajian failed to meet the  
15          criterion at 8 C.F.R. § 204.5(h)(3)(viii) because the letters he  
16          provided from ICofA did “not provide detailed and probative  
17          information that specifically addresses how your role was  
18          leading or critical for their organization.” ECF No. 6 at 4.  
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1           48. However, 8 C.F.R. § 204.5(h)(3)(iii) does not require that a  
 2           petitioner provide “detailed”<sup>5</sup> information that specifically  
 3           addresses how his role with critical for an organization with a  
 4           distinguished reputation.<sup>6</sup>

5           49. Agency action is arbitrary and capricious if it informally  
 6           imposes a requirement not previously made a part of its  
 7           regulations, *Maximum Home Health Care, Inc. v. Shalala*, 272  
 8           F.3d 318, 319 (6th Cir. 2001).

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9           <sup>5</sup> Section 204 of Title 8 of the Code of Federal Regulations contains  
 10          numerous requirements for “detailed” information. E.g., §§  
 11          204.5(m)(7)(vi) (a detailed description of the alien's proposed daily  
 12          duties”); 204.6(m)(3)(iii) (“Provides a detailed statement regarding the  
 13          amount and source of capital which has been committed to the regional  
 14          center”), and 204.6(m)(3)(iv) (“Contains a detailed prediction regarding  
 15          the manner in which the regional center will have a positive impact on  
 16          the regional or national economy”). “Where Congress includes particular  
 17          language in one section of a statute but omits it from another, it is  
 18          generally presumed that Congress acts intentionally and purposely in  
 19          the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S.  
 20          16, 23 (1983). Statutory canons of construction apply also to  
 21          regulations. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2414 (2019). Accordingly, it  
 22          should be presumed that Congress acted intentionally in omitting from  
 23          § 204.5(h)(3)(viii) the requirement that the petitioner provide *detailed*  
 24          evidence of the beneficiary’s performance of a leading or critical role for  
 25          an organization with a distinguished reputation.

26  
 27          <sup>6</sup> The Decision does not dispute that ICofA is an organization with a  
 28          distinguished reputation.

1           50. Therefore, this conclusion was arbitrary and  
2  
3           capricious inasmuch as it informally imposed a requirement  
4           not previously made a part of USCIS's regulations.

5           51. Further, the record shows that Mr. Bastajian's information  
6           regarding the critical role he played for ICofA was in fact  
7           detailed.  
8

9           52. Where a law requires that "operators of oil or gas wells  
10          within a drilling unit 'shall issue' to owners of land in the unit  
11          'a sworn, detailed, [and] itemized statement . . . contain[ing]  
12          the costs of drilling, completing, and equipping the unit well.',  
13          Brannon Props., LLC v. Chesapeake Operating, Inc., 514 F.  
14          App'x 459, 459 (5th Cir. 2013) (emphasis in the original), the  
15          "'detailed' requirement" means that "the report has to relate  
16          the cost to the benefit: it must tell the unleased mineral owner  
17          what it is getting for its money."). B. A. Kelly Land Co., LLC v.  
18          Aethon Energy Operating, LLC, 25 F.4th 369, 376 (5th Cir.  
19          2022), quoting Brannon Props, 514 F. App'x at 461.  
20  
21  
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26          53. Accordingly, here, even if the regulation required that the  
27          petitioner provide "detailed" information establishing the  
28

critical role he played in an organization of distinguished reputation, this simply means that the information must relate to the petitioner's role in the organization and it must tell the agency how he was critical to that organization.

54. ICofA's letter of December 11, 2021, explains in detail that, after completing its new and expanded mosque, which was the largest Shia mosque in North America,

the mosque, particularly its dome, was largely bare. Inscriptions from the Qur'an usually adorn the interiors and exteriors of mosques, establishing a strong link between scripture and the place of prayer. .... However, given the large expense of the building of the mosque, it seemed like the heavy (and often quite expensive) task of decoration would have to be delayed indefinitely. This is why the ICofA leadership was (pleasantly) surprised and amazed when Harout Bastajian, already widely recognized as one of the leading practitioners of religious decorative art in the Islamic World, volunteered to decorate the ICofA's mosque without compensation. This great undertaking, spanning several months, turned our new Mosque from a mere piece of architecture into a living breathing monument to God. Religious worshipers and visitors from all over the world, when they come to the Islamic Center, are able to gain inspiration from the verses of the Qu 'ran and elaborate religious decoration which burst upon them from all directions.

Harout Bastajian certainly has played a critical role for the ICofA because without him it might have taken years to

1 raise the funds to decorate the mosque, and even had the  
2 funds been raised, there were few in the world - and none  
3 in North America -who could have done at any price the  
4 amazing job which he did out of the goodness of his heart.

5 ECF No. 4 at 25.

6  
7 55. Thus, the information contained in this ICofA letter does  
8 explain how Mr. Bastajian's role for its organization was  
9 critical since he transformed a "largely bare" mosque into "a  
10 living breathing monument to God" and that "Religious  
11 worshipper and visitors from all over the world, when they  
12 come to the Islamic Center, are able to gain inspiration from  
13 the verses of the Qu 'ran and elaborate religious decoration  
14 which burst upon them from all directions." Id.

15  
16  
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18  
19 56. Finally, the letter affirmed that "Harout Bastajian certainly  
20 has played a critical role for the ICofA because without him it  
21 might have taken years to raise the funds to decorate the  
22 mosque, and even had the funds been raised, there were few  
23 in the world - and none in North America -who could have  
24 done at any price the amazing job which he did out of the  
25 goodness of his heart." Id.  
26  
27  
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1           57. Accordingly, the letter from ICofA of December 21, 2021, did  
2  
3           in fact contain detailed information regarding the critical role  
4  
5           of Mr. Bastajian in that it explained exactly what he did and  
6           why it was critical for the organization.

7           58. Further, “Probative’ ... means ‘tending to prove or  
8  
9           disprove.; Black's Law Dictionary 1240 (8th ed. 2004)”  
10          United States v. Carranza, 571 F. App'x 372, 376 (6th Cir.  
11          2014).

12  
13          59. Both of ICofA’s letters tended to prove Mr. Bastajian played  
14          a critical role for ICofA, and so were probative.

15  
16          60. Inasmuch as the record contains extensive evidence that Mr.  
17          Bastajian provided information regarding his critical role for  
18          ICofA that was both detailed and probative, and there is none  
19          to the contrary, the Decision’s conclusion that this information  
20          was not detailed nor probative ran counter to the evidence in  
21          the record.  
22

23  
24          61. Furthermore, the Decision failed to articulate any rational  
25          connection between the facts found and its conclusion that the  
26          information provided was not detailed or probative.  
27  
28

62. Finally, inasmuch as the regulations contain no requirement that the “critical role” played for the organization be as an employee, and in fact the USCIS’s own Policy Manual advises that “The organization need not have directly employed the beneficiary” for him to have played a critical role, Policy Manual Volume 2 - Nonimmigrants Part M - Nonimmigrants of Extraordinary Ability or Achievement (O) Chapter 4 - O-1 Beneficiaries, Appendix: Satisfying the O-1B7 Evidentiary Requirements § 3 <https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4> (last accessed 11/5/2023), therefore the Decision’s holding that “Contracted work is not evidence of a leading or critical role for an organization or establishment.” informally imposes a requirement not previously made a part of USCIS’s regulations (or even policy).

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<sup>7</sup> The requirement pertaining to “critical role” in the regulations for O-1B petitions is virtually identical to that pertaining to those regarding extraordinary ability. *Cf.* 8 C.F.R. § 214.2(o)(3)(v)(B)(3) with § 204.5(h)(3)(viii). “A word or phrase is presumed to bear the same meaning throughout a text; a material variation in terms suggests a variation in meaning.” Scalia, Antonin; Garner, Bryan A.. *Scalia and Garner's Reading Law: The Interpretation of Legal Texts* (p. 145). Thomson West. Kindle Edition.

1           63. Accordingly, the Decision's finding that Mr. Bastajian failed  
2           to satisfy the criteria of 8 C.F.R. §§ 204.5 (h)(3)(iii), (vii) and  
3           (viii) were each arbitrary and capricious as was its conclusion  
4           that he did not meet three of the ten criteria contained in §  
5           204.5(h)(3).  
6

7  
8       WHEREFORE this Court should hold unlawful and set aside the  
9  
10      USCIS's Decision denying Mr. Bastajian's Form I-140 as arbitrary and  
11      capricious.  
12

13           **II. TO HOLD UNLAWFUL AND SET ASIDE THE DECISION**  
14           **DENYING MR. BASTAJIAN AND FAMILY'S FORMS I-485.**

15           64. The USCIS's Decisions denying Mr. Bastajian and his  
16           family's Forms I-485 was premised solely upon the denial of  
17           Mr. Bastajian's Form I-140, and so are also arbitrary and  
18           capricious.  
19  
20

21      WHEREFORE USCIS's Decisions denying Mr. Bastajian and his  
22      family's Forms I-485 should also be held unlawful and set aside.  
23  
24

25           **III. TO COMPEL THE USCIS TO RE-ADJUDICATE MR.**  
26           **BASTAJIAN'S FORM I-140 AS WELL AS HIS AND HIS**  
27           **FAMILY'S FORMS I-485 FORTHWITH**  
28

1           65. The USCIS, by unlawfully denying Mr. Bastajian's petition,  
2           as well as his and his family's Forms I-485, has unreasonably  
3           delayed and/or unlawfully withheld a lawful decision in this  
4           matter.  
5

6  
7           WHEREFORE the Court should compel the USCIS to make a lawful  
8           decision on HAROUTIOUN BASTAJIAN'S Form I-140 and ALINA  
9           NOVIKOVA BASTAJIAN, CHRIS BASTAJIAN, ANGE  
10          BASTAJIAN, KARINA BASTAJIAN, MARIA BASTAJIAN and GIO  
11          BASTAJIAN's Forms I-485.  
12  
13

14  
15           Respectfully Submitted this 24th day of November, 2023  
16

17           /s/ *Michael E. Piston*

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